

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10867 of 1995

- =====
1. Sudhakar Shukla, son of late Chandrabhan Shukla
 2. Kuber Shukla
 3. Nitesh Shukla, minor sons of late Diwakar Shukla through Sudhakar Shukla guardian & next friend
 4. Udaibhan Shukla, son of Bhikhan Shukla
 5. Prabhawati Devi, wife of Udaibhan Shukla
 6. Ram Sagar Shukla, son of Devi Saran Shukla, all residents of village- Mishrauli, Tola- Chapwa, Police Station- Kataiya, Post Office- Belhikhas, District-Gopalganj
- Petitioners

Versus

1. The State of Bihar
 2. Joint Director, Consolidation, Muzaffarpur
 3. Deputy Director, Consolidation, Siwan, District- Siwan
 4. Consolidation Officer, Kataiya, District- Gopalganj
 5. Rama Kant Mishra, son of late Janak Mishra, resident of village- Choubinepatti, Post Office & Police Station- Turkpatti, District- Padrauna (Uttar Pradesh)
- Respondents
- =====

Appearance :

For the Petitioners :	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Ranjan Kumar Dubey, Advocate Mrs.Sangeeta Sharma, Advocate Mr. Rakesh Chandra, Advocate Mr. S.N.Shukla, Advocate,
For the State :	Mr. Syed Arshad Alam, SC 3 Mr. Mritunjay Kumar Jha, AC to SC-3
For Resp. No. 5 :	None.

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 07-05-2015

Heard learned counsel for the petitioners and learned counsel for the State. No one appears for the private Respondent No.5.

The application has been filed for quashing the order dated 16.10.1995 passed by the Joint Director, Consolidation in Muzaffarpur Case No. 752/1990 as also the order dated 20.3.1990

passed in Appeal Case No. 39/1989 by the Deputy Director, Consolidation, Siwan, which appellate order has been upheld by the Revisional Court.

The disputed land in the present matter is Cadestral Survey Plot No. 75, Khata No. 18 of village Chapwa, area 1 katha 18 dhurs. The admitted position is that the land in question belonged to one Saheb Shukla, who died leaving behind two sons, Chiranji Shukla and Yadu Shukla. It is further not in dispute that the land in question formed part of the share of Yadu Shukla who was survived by four sons out of whom three sons were issueless while one son had a daughter Lalita Devi who in turn had two sons, Yogendra Mishra and Ramesh Mishra and two daughters, Lilawati Devi and Saraswati Devi. Kapildeo Shukla was one of the four sons of Yadu Shukla and he was issueless and had survived the other three brothers and on 24.6.1950 he executed a deed of gift for 4 Bighas 1 katha and 6 ½ Dhurs which included the present disputed land. It has been the specific case of the petitioners that with regard to the remaining lands transferred by the said deed of gift, there is no dispute or challenge by any one except for the present dispute over 1 Katha 18 Dhurs. It is again not in dispute that Kapildeo Shukla was alive at least till the year 1976 when he executed a second deed of gift on 11.6.1976 with regard to the disputed land and some other lands in favour of



Jaikishun Mishra and Murlidhar Mishra who in turn sold the said land on 31.1.1979 to one Ramakant Mishra, Respondent no.5 who claims to be coming in possession since the said period and had his name also entered in the Government records. There was also a Section 145 Cr.P.C. dispute between the parties which was decided in favour of Respondent No.5 but in revision against the same, the order was set aside by the 2nd Additional Sessions Judge, Gopalganj by his order dated 4.6.1987 in Cr. Revision No. 424A of 1983.

The stand of the petitioners is that they have been continuing in possession over the entire lands which came to them by virtue of the deed of gift dated 24.6.1950 including the disputed land, whereas the stand of the Respondent No.5 is that the deed of gift was a forged and fraudulent document and the petitioners did not get any transfer of title on the basis of the same nor did they ever come in possession over the disputed land.

The further stand of the petitioners is that Yogendra Mishra who was the donee along with his mother under the deed of gift dated 24.6.1950 died during the life time of his mother who inherited his property and upon the death of the mother Lalita Devi, her two daughters and one son came upon and continued in possession over the properties. The said two daughters and son thereafter executed registered sale deed on 24.4.1979 in favour of

Lalmati Kuar, widow of Chandrabhan Shukla and Prabhawati Devi, wife of Udaybhan Shukla, for a sum of Rs. 6,000/- and put them in possession and petitioner nos. 1 to 3 are heirs of Lalmati Devi who died subsequently.

The dispute arose in the present matter when the Respondent No. 5 in the course or consolidation proceedings filed Consolidation Case No. 18/1988. The Consolidation Officer made a local inspection on 3.3.1989 and found two stacks of Goitha on the land which was found to be Parti and otherwise vacant but came to the conclusion that merely by keeping Goitha the possession cannot be established and on a smaller piece of land possession would follow the title and further found that the Respondent No. 5 does not live in village and came to the conclusion that neither he is in possession nor title is proved. The case was, accordingly, decided in favour of the petitioners. On appeal, being Appeal Case No. 39/1989 filed by Respondent No. 5, the Deputy Director of Consolidation also made a local inspection and again found stacks of Goitha and from enquiry from the local people, some people told about one half land being in the possession of the petitioners and the other half in the possession of respondent no.5 and accordingly directed that on the basis of the possession alone Khata should be opened for half of the land in favour of the petitioner and for half of the land in favour of

respondent No.5. Upon revision being filed by the petitioners being Revision Case No. 752/1990, the Joint Director, Consolidation upheld the aforesaid appellate order dated 20.3.1990. Aggrieved by the same the petitioners have filed the present writ petition.

Learned counsel for the petitioner submits that the sheet anchor of the case of the petitioners is the deed of gift dated 24.6.1950. Being a registered document there is a presumption of valid registration of the same and the said document had not been cancelled or set aside in accordance with law; whereas since the doner Kapildeo Shukla was admittedly alive for at least a period of 26 years after the said deed of gift was executed, it has to be held that the petitioners have valid title over the land in question.

It is further submitted by learned counsel that Kapildeo Shukla having passed his title by executing the deed of gift on 24.6.1950, he could not have thereafter executed the subsequent deed of gift in the year 1976 as he had not valid title left to convey in the matter and no right and title could accrue on the basis of the subsequent deed of gift. Thus, the second deed of gift is void ab initio in the eye of law.

Learned counsel further submits that the entire case of the respondent No. 5 is demolished on the basis of local inspections made in which the possession of the petitioner even at the appellate



stage was found over half of the land and in such situation it could not be said that the deed of gift had not been acted upon. As a matter of fact, it is submitted by learned counsel for the petitioners that the only requirement for the validity of the deed of gift under the Transfer of Property Act is registration of the same followed by acceptance by the donee. It is urged that at no stage it was a case of the respondent No. 5 that the deed of gift was not accepted by the predecessors in interest of the petitioner, Lalmati Devi and Yogendra Mishra, and thus presumption of validity of deed of gift is not open to challenge.

Learned counsel further submits that the deed of gift being a registered document could only have been avoided by getting it set aside in a Court of law and the deed of gift dated 24.6.1950 should have been considered as valid by the Consolidation authorities, as it is beyond the purview of the consolidation authorities to have set aside the same.

In support of the aforesaid propositions learned counsel for the petitioners relies upon several decisions of the Supreme Court, the first being in the case of Prem Singh & Ors. Vs. Birbal and Others: (2006) 5 SCC 353, in para-27 of which it has been held as follows:-

“27. There is a presumption that a registered

document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

The next case relied upon is that of Gorakh Nath Dube Vs. Hari Narain Singh & Ors.: AIR 1973 Supreme Court 2451, in the relevant part of para 5 of which it has been laid down as follows:-

“5. There is no decision of this Court directly on the question whether a suit for cancellation of a sale deed, which was pending on the date of the notification under Section 4 of the Act, abates under Section 5(2) of the Act. A decision of a Division Bench of the Allahabad High Court in Jagarnath Shukla V. Sita Ram Pande, 1969 All LJ 768 directly dealing with the question before us, was then cited before us. Here, we find a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court the preponderating weight of which is cast in favour of the view that questions relating to the validity of sale deeds, gift deeds, and wills could be gone into in proceedings because such questions naturally and necessarily arose and had to be decided in the course of adjudications on rights or



interests in land which are the subject matter of consolidation proceedings. We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it.”

The last decision relied upon by learned counsel is

that of Dhurandhar Prasad Singh Vs. Jai Prakash University and others: AIR 2001 SC 2552, para 21 of which is quoted below:

“21. Thus, the expressions “void and voidable” have been subject-matter of consideration on innumerable occasions by Courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given

a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

Learned counsel for the State does not seriously contest the above propositions.

On a consideration of the facts and circumstances of the case and the submissions of learned counsels, it is evident that the factum of there being a registered deed of gift executed on 24.6.1950 by Kapildeo Shukla has not been disputed before the authorities below. The respondent no. 5 had only alleged that the same was a forged and fraudulent document which had not been acted upon and the predecessor-in-interest of the petitioners never came in possession over the same and on the other hand, the subsequent deed of gift of the year 1976 was valid and by the sale deed in his favour he had come in possession over the land in question.

It is evident that the deed of gift being a registered document, as held by the Apex Court in Prem Singh's case (supra), it prima facie is a valid document in law as the presumption is that it had been validly executed, and thus it was open to respondent no. 5

to have laid evidence to rebut the said presumption but there does not appear to be anything on the record to show that apart from making the aforesaid allegations any attempt was made to produce evidence to rebut the said presumption by the respondent no.5.

It is also evident from the records of the case that even the question of possession was never finally decided in favour of respondent no. 5 as the finding under Section 145 Cr.P.C. was set aside in Cr. Revision by the Additional Sessions Judge. On the other hand, the finding of the consolidation authorities themselves was at the very least even at the appellate stage that the petitioners were in possession over at least half the lands and there is no further finding that the petitioners were not in possession over the remaining land of 4 Bighas 1 kathas 6 ½ Dhurs which was the subject matter of the deed of gift dated 24.6.1950. Thus, it has to be held that the petitioners were in possession at least over a substantial portion of the lands under the deed of gift and the assertion made to the contrary by the respondent no. 5 clearly stands disproved.

Moreover there was not even any assertion by the private respondent that there was no acceptance of the deed of gift by the donee which is the only requirement apart from registration for the purpose of valid acknowledgement under the Transfer of Properties Act.

Further, the deed of gift dated 24.6.1950 being a registered document and the donee himself having survived for more than 26 years after its execution it could not have been treated as a void deed and could have been avoided only by taking recourse to a Court of law by filing a suit for declaration that the document is fraudulent and/or forged and fabricated. It was for the respondent No. 5 and his predecessor-in-interest, including the said Kapildeo Shukla, to have taken steps in that regard but the same not having been done it is too late in the day to come to the conclusion that the petitioners have no right, title and interest under the deed of gift dated 24.6.1950.

Thus, for all the aforesaid reasons, this Court is of the view that the impugned orders dated 16.10.1995 of the Joint Director, Consolidation, Muzaffarpur and 20.3.1990 of the Deputy Director, Consolidation, Siwan cannot stand. They are, accordingly, set aside.

The writ application is thus, allowed.

(Ramesh Kumar Datta, J)

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